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No. 98-1993

In the

Supreme Court of the United States

THE STATE OF FLORIDA,

Petitioner,

v.

J.L., A JUVENILE,

Respondent.

On Writ of Certiorari
To the Supreme Court of Florida

BRIEF OF THE STATES OF ILLINOIS, ALABAMA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, INDIANA, IOWA, KANSAS, LOUISIANA, MARYLAND, MICHIGAN, MINNESOTA, MISSOURI, MONTANA, NEVADA, NEW HAMPSHIRE, NEW MEXICO, NORTH CAROLINA, OHIO, OKLAHOMA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, TENNESSEE, TEXAS, UTAH, WASHINGTON, WYOMING AND THE TERRITORY OF PUERTO RICO, AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF THE AMICI CURIAE

This case addresses when an anonymous tip provides police officers with reasonable suspicion of criminal wrongdoing sufficient to justify a temporary investigative detention. The Court's resolution of that question will affect the practices of law enforcement agents and the admission in prosecutions of evidence obtained by state and local police officers who apprehend suspects after relying upon such anonymous tips. As the States' chief law enforcement officers, the undersigned Attorneys General have a direct and significant interest in the outcome of this case.

SUMMARY OF ARGUMENT

In addition to a police officer's personal observations, the Court has allowed tips both by known informants, *Adams v. Williams*, 407 U.S. 143, 147 (1972), and by anonymous informants, *Alabama v. White*, 496 U.S. 325, 329-332 (1990), to provide the requisite reasonable suspicion of criminal wrongdoing sufficient to permit an investigative stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968). While the Court has eschewed any rigid rule for determining when reasonable suspicion has been met in the context of an anonymous tip, it has, nevertheless, focused on several key factors in determining whether the totality-of-the-circumstances test has been met. These include: (1) the degree of intrusion of the search and/or seizure, (2) the extent to which the details of the tip are verified, and (3) the nature of the criminal activity alleged.

First, because an investigative stop is less intrusive than a full blown search or arrest, an officer need not have the same quantity or quality of information or the same level of certainty with respect to anonymous tips in the former context. Second, independent corroboration by the police of information

provided by the tipster increases the reasonableness of the officer's reliance on the tip. Finally, the totality of the circumstances must take into account the nature of the criminal activity alleged by the anonymous tip.

This Court's decisions extending protections to law enforcement officers in various contexts apart from those involving anonymous tips consistently sound a common theme – the Fourth Amendment does not prohibit an officer who is discharging his duty from taking reasonable steps to protect either himself or the public. The Court's concern for the danger to police should be particularly strong where, as here, guns are involved. Statistics, like those which the Court has relied upon in past decisions, reveal that handgun slaying and assaults pose a growing danger to officers, especially in situations similar to the disturbance call received here.

Application of the aforementioned factors compels a finding that, under the totality of the circumstances test, the anonymous tip here was sufficiently reliable to satisfy *Terry*. The limited nature of both the detention and the frisk, and the fact that all of the tip's descriptive details were immediately corroborated, distinguish the present situation from the "close case" the Court referred to in *White*. Most significantly, this case included an imminency (a gun) which was absent in *White*. The nature of this suspected criminal activity should weigh heavily in the Court's consideration of the totality of the circumstances and should lead to the conclusion that the anonymous tip here was sufficiently reliable to justify a *Terry* stop of J.L.

ARGUMENT

AN ANONYMOUS TIP WHICH STATED THAT RESPONDENT WAS CARRYING A CONCEALED WEAPON, AND WHICH CONTAINED PUBLICLY CONFIRMABLE DETAILS WHICH WERE IMMEDIATELY CORROBORATED, PROVIDED REASONABLE SUSPICION JUSTIFYING A TEMPORARY INVESTIGATIVE STOP

Since its decision in *Terry v. Ohio*, 392 U.S. 1 (1968), this Court has recognized that not every restriction on personal privacy or liberty sufficient to constitute a "search" or "seizure" requires the degree of individualized suspicion necessary to satisfy the probable cause standard. Instead, the Court's decisions establish that "the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause." *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

The standard applicable to investigative stops and pat-down searches under *Terry* "effects a needed balance between private and public interests." *United States v. Montoya de Hernandez*, 473 U.S. 531, 541 (1985). Although the reasonable suspicion standard precludes random or arbitrary seizures, or those based merely on a subjective "hunch," the burden of justification that it imposes "is considerably less than proof of wrongdoing by a preponderance of the evidence." *Sokolow*, 490 U.S. at 7. Rather, that standard requires only "some minimal level of objective justification to validate the detention or seizure." *INS v. Delgado*, 466 U.S.

210, 217 (1984); *see also United States v. Cortez*, 449 U.S. 411, 417 (1981) ("An investigative stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.").

Determinations of reasonable suspicion are to be made based upon the totality of the circumstances or the "whole picture." *See Cortez*, 449 U.S. at 418. A trained police officer is given great latitude in assessing the "whole picture," including the consideration of "various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers." *Id.* This Court has noted that "[f]rom these data, a trained officer draws inferences and makes deductions – inferences and deductions that might elude an untrained person." *Id.*

While such investigatory stops are often based on the officer's firsthand observation of a suspect's unusual or idiosyncratic behavior, the reasonable suspicion standard can be satisfied even without such observations. In *Adams v. Williams*, 407 U.S. 143, 147 (1972), the Court broadened the *Terry* standards by allowing reasonable suspicion to be established not only by police observation, but also by information received from a known informant. Anonymous tips have also been held to furnish reasonable suspicion for an investigative stop, particularly where some details of the tip were verified independently. *See Alabama v. White*, 496 U.S. 325, 329-332 (1990). Where, as here, the anonymous tip both has innocent details which have been confirmed, and is geared toward protecting the public from violent crime, the totality of the circumstances test has been met.

A. This Court Has Looked To A Variety Of Factors In Determining Whether An Anonymous Tip Is Sufficient To Justify A *Terry* Search And Seizure

The Court has recognized that the police ought not to ignore information solely because it is received from anonymous individuals. *See White*, 496 U.S. at 329-332; *Illinois v. Gates*, 462 U.S. 313, 327 (1983) (noting the utility of anonymous tips in solving otherwise "perfect crimes"). Still, the mere existence of an anonymous tip, standing alone, does not satisfy reasonable suspicion; "something more" is required. *See White*, 496 U.S. at 329 (*citing Gates*, 462 U.S. at 227). The variety of circumstances surrounding tips has dissuaded the Court from enunciating any clear test for determining what "more" may be required. As this Court noted with regard to using anonymous tips to justify issuance of a search warrant, "[r]igid legal rules are ill-suited to an area of such diversity." *Gates*, 462 U.S. at 232.

Despite the lack of a clear test, several key factors have informed the Court's decisions in the context of determining what justifies a search or seizure based on an anonymous tip. Among these key factors are: (1) the degree of intrusion of the search and/or seizure, (2) the extent to which the details of the tip are verified, and (3) the nature of the criminal activity alleged.

1. As noted, because a *Terry* stop entails a significantly smaller intrusion than a full blown search or arrest, an officer needs less certainty of wrongdoing before he can engage in such an investigatory stop. 392 U.S. at 25-26. This is reflected, of course, in the reasonable suspicion standard, which is a significantly lower standard than the probable

cause standard. *Id.* at 27. The lesser standard employed for determinations of reasonable suspicion, in turn, has a direct bearing on the utility of police officers' use of anonymous tips. In *White*, the Court held that the effect of this lower burden was that reasonable suspicion not only could be established with information that was different in quantity or content than that required to establish probable cause, but also could be established with information that was less reliable than that required to establish probable cause. *White*, 496 U.S. at 330 (*citing Adams*, 407 U.S. at 147). Consequently, despite the fact that the tip in *White* was not as detailed as that in *Gates* (which involved a warrant), nor the corroboration as complete, the anonymous tip provided the required suspicion. *White*, 496 U.S. at 329.

2. The extent to which information provided in anonymous tips is independently verified by the police is another relevant consideration. Because "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity," some corroboration is usually needed to provide a basis to conclude that the information is reliable. *White*, 496 U.S. at 329. This flows from the common-sense notion that "because an informant is right about some things, he is more probably right about other facts." *Gates*, 462 U.S. at 244 (*quoting Spinelli v. United States*, 393 U.S. 410, 427 (1969) (White, J., concurring)). Consistent with the totality-of-the-circumstances approach, there is no bright-line amount of corroboration required. The reasonable suspicion determination involves a case-by-case review of the content of the information and its degree of reliability. *White*, 496 U.S. at 329. Thus, in *White*, the Court did not require that the police verify every innocent detail mentioned by the tipster. *Id.* at 331. Obviously, though, the more information

verified by the police, the more confidence the police can have in the reliability of the tip. The Court in *White* found the correct prediction of future behavior by a tipster to be powerful evidence of the tipster's reliability. *Id.* at 332. The Court did not, however, create a rule requiring that anonymous tips predict future events before they provide reasonable suspicion to conduct an investigatory stop.

3. The totality of the circumstances to which the Court refers in *Alabama v. White* must include those in which the anonymous informant alerts the police to an imminent danger that the police cannot ignore except at risk to their personal safety or the safety of the public. This conclusion reflects this Court's long-standing approach to Fourth Amendment jurisprudence. Any fair reading of *Terry* and its progeny reveals that those decisions involve a careful balancing of interests. *Terry* weighed the interest of the individual against the legitimate interest in "crime prevention and detection," and the "need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest." *Michigan v. Long*, 463 U.S. 1032, 1047 (1983) (*quoting Terry*, 392 U.S. at 22, 24). Of course, the interest of the individual detained and frisked pursuant to either a drug tip or a gun tip will not fluctuate; in either case, he seeks to avoid an "intrusion upon cherished personal security." *Terry*, 392 U.S. at 25. But the Government's interest in protecting its law officers and the public depends upon the nature of the criminal activity reported by the informant.

The Court's Fourth Amendment decisions post-*Terry* have served to extend protections to law enforcement officers in various contexts. Despite the varied facts, the language in

these cases clearly expresses a common conclusion – that the Fourth Amendment does not prevent the police from taking reasonable steps to protect their own safety or the safety of the public. *See Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) ("We think it too plain for argument that the State's proffered justification – the safety of the officer – is both legitimate and weighty."); *Long*, 463 U.S. at 1052 (allowing *Terry* search of the interior of an automobile, in part because officers are "particularly vulnerable" during such "close range" investigations); *Minnesota v. Dickerson*, 508 U.S. 366, 382 (1993) (Scalia, J., concurring) (noting that since the time the Constitution was ratified "concealed weapons capable of harming the interrogator quickly and from beyond arm's reach have become common" and this might "alter the judgment of what is 'reasonable' under the original standard"); *Maryland v. Wilson*, 519 U.S. 408, 413 n.2 (1997) (reaffirming that "[t]here is a strong public interest in minimizing the number of assaults on law officers"); *cf. New York v. Quarles*, 467 U.S. 649, 653 (1984) ("concern for public safety" was "paramount to adherence to the literal language in *Miranda*[*v. Arizona*, 384 U.S. 436 (1966)]").

Where the criminal activity reported by an informant involves guns, the governmental interest is particularly strong because of the potential for danger. *Terry* itself relied upon statistics totaling the number of deaths and assaults upon law enforcement officers as a result of gun violence. *Terry*, 392 U.S. at 24 n.21. Recent statistics only serve to heighten the governmental interest recognized in *Terry*. According to figures released by the FBI, since 1988, nearly 700 law enforcement officers throughout the country have been slain in the line of duty, another 629 have been killed in duty-related accidents, and more than 600,000 officers have been

assaulted. *See Federal Bureau of Investigation, Uniform Crime Reports, Law Enforcement Officers Killed and Assaulted* Foreword (1997) (*citing* excerpts from speech given at Law Enforcement Memorial Ceremony Clarksburg, West Virginia, May 14, 1998). In 1997 alone, nationwide there were 65 law enforcement officers slain feloniously in the line of duty. *Id.* at 3.[1] This total was 16 percent higher than reported in 1996. *Id.* The largest percentage of victim officers were assigned to vehicle patrol, as was the officer in the instant case. *Id.* Firearms continue to be the weapon most frequently used in the slaying of officers, accounting for 62 of the 65 slayings. *Id.* at 4. Handguns were the murder weapons in 44 of the killings, rifles in 12, and shotguns in 6. *Id.* In addition 49,151 law enforcement officers were assaulted during 1997, an average of 11 out of every 100 officers. *Id.* at 69.[2] And firearms were used in 4 percent of all assaults. *Id.* Most significant is the fact that 3 of every 10 of the reported assaults resulted from responding to disturbance calls akin to the one at issue here. *Id.*

The danger to the general public from the illegal use of firearms is also great. As of 1990, 200 million handguns and other lethal firearms were in circulation in the United States, with more than 4.2 million firearms being added to that total each year. *See United States v. Bold*, 19 F.3d 99, 104 (2d Cir. 1994). These weapons caused some 37,000 gunshot

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[1]This figure represents reports received from law enforcement agencies in 29 states and the District of Columbia. *Id.*

[2]This figure represents reports received from 8,692 agencies covering 75 percent of the total United States population. These agencies employed a total of 451,980 officers. *Id.*

deaths in the United States in 1990, and approximately 259,000 nonfatal injuries. *Id.*

B. Under The Totality Of The Circumstances Test, The Police Had Reasonable Suspicion To Justify A Temporary Investigative Stop Of Respondent

Here, the police received an anonymous telephone tip that a concealed weapons violation was taking place. The informant told police that the individual with the gun was one of several young black males standing at a bus stand in front of a pawn shop at a particular location. The informant advised the police that the youth carrying the gun was wearing a "plaid-looking" shirt. Additionally, the informant gave descriptions of the other boys at the bus stop.[3] Officer Carmen Anderson, a police officer with more than fourteen years of experience, and another officer arrived at the scene just six minutes after receiving the anonymous tip. Respondent, J.L., was standing by the bus stop with two other young black males and he was wearing a plaid shirt. Officer Anderson approached J.L., since he fit the tipster's description of the individual with the gun, and asked him to place his hands on the bus stop. As she began to frisk J.L., she saw the butt of a gun "hanging out" of his left pants pocket. Pet. App. at 40-42.

An analysis of the three factors outlined in the previous section compels a finding that the anonymous tip here was

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[3]At the hearing on J.L.'s motion to suppress, Officer Anderson testified that the anonymous informant gave a description of each of the boys, but apart from recalling that one of the other two boys was wearing a "tan polo shirt" and the other a "color[ed] top," she could not recall "what other information" was given." Pet. App. at 40-41.

sufficiently reliable under *Terry*.[4] First, the investigatory detention here was brief, comprising only the amount of time necessary for the officer to instruct J.L. to place his hands on the bus stop. Pet. App. at 42. As soon as Officer Anderson started to frisk J.L., she saw the gun butt hanging out of his pocket. *Id.* The resulting search was equally limited. As soon as the officer saw the gun butt hanging out of J.L.'s pocket she felt the bulge and removed the gun from J.L.'s pocket and placed him in custody. Pet. App. at 42, 44.

Turning to the second factor, sufficient corroboration was established by police prior to the investigatory detention. Upon arriving at the scene just minutes after the tip, police were able to verify not some, but *all* of the tip's descriptive details. The tipster's information as to location, J.L.'s manner of dress, and the physical descriptions of J.L. and his two companions were all corroborated.

The adequacy of this level of corroboration is perfectly consistent with *Alabama v. White*. In *White*, the police received an anonymous telephone tip that Vanessa White would leave 235-C Lynwood Terrace Apartments at a particular time in a brown Plymouth station wagon with a broken right taillight lens, that she would go to Dobey's

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[4]The most basic assumption of *Terry* is that a police officer must conclude that illegal or "criminal activity may be afoot." 392 U.S. at 30. Carrying a concealed weapon is illegal in some states. Although it is legal to carry a concealed weapon in Florida (if the person has a concealed weapons permit), minors, like Respondent, J.L., are prohibited both from carrying and possessing concealed weapons. *See* § 790.01(2), Fla. Stat. (1995); § 790.22(3), Fla. Stat. (1995). Since the anonymous tip here informed police that the individual in possession of the concealed weapon was "young," *see* Pet. App. at 40-41, the police were alerted to possible criminal wrongdoing.

Motel, and that she would possess approximately one ounce of cocaine inside a brown attache case. *White*, 496 U.S. at 327. The police proceeded to the apartment building, saw a parked vehicle matching the caller's description, observed a woman as she left the building and entered the vehicle, and followed her along the most direct route toward the motel, stopping her vehicle just short of the motel. *Id*. A consensual search of the vehicle revealed marijuana and, after White was arrested, cocaine was found in her purse. *Id*.

The Court concluded that, under the totality of the circumstances, significant aspects of the informant's tip were sufficiently corroborated to furnish reasonable suspicion. *Id*. at 331. This was so even though the tip contained no description of White, and the officers failed to make a positive identification of the driver during the investigative stop. *See White v. State*, 550 So.2d 1074, 1079 (Ala. Crim. App. 1989). In fact, the officers had no way of knowing the driver was actually White until she was arrested and processed. *Id*. The informant had indicated that White would carry a brown attache case as she left the building, but she did not. *White*, 496 U.S. at 331. The officers did not corroborate White's time of departure or the fact that she left from apartment 235-C. *Id*. Finally, the destination was not actually corroborated since the officers stopped her short of Dobey's Motel. *Id*.

The reliability of the tip in the case at bar compares favorably to the reliability of the tip in *White*. It is true that, unlike *White*, the anonymous tipster here did not predict future events. Here, however, *all* of the tip's descriptive details were corroborated. Moreover, the police corroboration of those details was immediate. Officer

Anderson testified that she arrived on the scene approximately six minutes after receiving the dispatch call concerning the tip. Pet. App. at 41.

Finally, turning to the third factor, the officers here were alerted to an imminent danger, a youth carrying a concealed weapon. The nature of the criminal activity involved here should be weighed heavily in considering the totality of the circumstances. In contrast to a tip regarding narcotics, like that at issue in *White*, this tip required immediate action by the police to avoid harm to the public or the officers themselves. If there is any doubt about the reliability of an anonymous tip in the former case, the police can limit their response to surveillance or engage in "controlled buys." But where guns are involved, there is the risk that an attempt to wait out the suspect might have fatal consequences. An officer who is able to corroborate other information in an anonymous tip that another person is in actual possession of a gun is faced with an "unappealing choice." *United States v. McClinnhan*, 660 F.2d 500, 502 (D.C. Cir. 1981). He must either stop and search the individual, or wait until the individual brandishes or uses the gun. *Id*. at 502-03.

For this reason, where a tip concerns an individual with a gun, the totality of the circumstances test for determining reasonable suspicion should include the consideration that the possible unlawful possession of a gun must be promptly investigated. "American Criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty and thousands more are wounded." *Terry*, 392 U.S. at 23. It was a similar concern to combat crime while at the same time insuring police officer safety which led to the Court's

decision in *Terry*. That decision represented a clear statement of the dangers of dealing with criminals in the United States by emphasizing the easy access to firearms in this country. Specifically, the Court recognized that "this fact is relevant to an assessment of the need for some form of self-protective search power." *Terry*, 392 U.S. at 24 n.21. *Terry* also demonstrated the Court's understanding that law enforcement requires instantaneous decisions and that protection of the public would never be adequate if police could act only on probable cause. Without *Terry*, it is doubtful law enforcement officers could deal with the myriad problems they encounter on a daily basis. One such recurring problem involves a police officer responding to a tip concerning guns. In this context, the officer should properly be able to take these hazards into consideration in balancing the suspect's interests against the "need for law enforcement officers to protect themselves and other prospective victims of violence." *Id.* at 24.[5]

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[5]For these reasons, many lower courts have upheld protective investigative stops despite the tips' lack of extensive detail or prediction of behavior where an informant declares that a described individual is armed. *See, e.g., United States v. Clipper*, 973 F.2d 944 (D.C. Cir. 1992) (an anonymous telephone tip that described an armed individual near a named location justified a protective search), *cert. denied*, 506 U.S. 1070 (1993); *United States v. DeBerry*, 76 F.3d 884 (7th Cir. 1996); *United States v. Bold*, 19 F.3d 99 (2d Cir. 1994). Other courts have intimated that they would uphold protective investigative stops under similar circumstances. *See, e.g., United States v. Roberson*, 90 F.3d 75 (3d Cir. 1996); *United States v. Gibson*, 64 F.3d 617 (11th Cir. 1995), *cert. denied*, 517 U.S. 1173 (1996); *United States v. Walker*, 7 F.3d 26, 30 (2d Cir. 1993), *cert. denied*, 510 U.S. 1169 (1994). These cases reflect the concern that "[a]rmed persons are so dangerous to the peace of the community that the police should not be forbidden to follow up a tip that the person is armed, and as a realistic matter this will require a stop in all cases." *DeBerry*, 76 F.3d at 886.

The *Terry* Court, no less than today's Court, was aware of the national concern with street violence. The facts of *Terry* for many seemed to typify the problems of urban crime: an officer stopped and searched three persons who appeared to be preparing an armed robbery of a downtown Cleveland store. The current experiences of our own contemporary society show that the struggle between the community and criminals is increasing in intensity and magnitude. It cannot be disputed that the tradition of armed violence by American criminals has increased since *Terry* was decided. Accordingly, the same concern for police safety that motivated the Court's decision in *Terry* and its progeny suggests that a finding of reasonable suspicion can be appropriate where police are investigating an anonymous informant tip involving a concealed weapon, despite the absence of predictive information.

Considering the totality of the circumstances in this case, including the officers' corroboration of all of the anonymous tip's descriptive details, and the report that one of the youths possessed a gun, this Court should conclude that the officers had a reasonable suspicion under *Terry* that authorized their stopping J.L.

CONCLUSION

For the foregoing reasons, the *amici* States respectfully urge the Court to reverse the lower-court decision.

Respectfully submitted,

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